

**Pramathesh et al.****U.S. Serial No. 09/682,843****REMARKS**

Claims 1-31 are pending in the present application. In the Office Action of February 27, 2003, claims 1, 3, 4, 7, 9, and 16-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (USP 6,290,413 B1) in view of OMEGAMARKER® Temperature Test Kit.

Applicant appreciates the Examiners indication of allowability of claims 10-15 and 22-27 and the indication of allowable subject matter in claims 2, 5, 6, and 8. New claims 28-31 are the combination of the allowable subject matter as explained below.

**Claim Objection**

Regarding the Examiner's rejection to claims 2 and 10 as having insufficient antecedent basis for the limitation "coupled to at least one annular ring of the housing;" Applicant has amended these claims to call for a collet "coupled to an at least one annular ring of the housing" to overcome the Examiner's rejection. Should the Examiner consider this particular matter unresolved the Examiner is encouraged to provide a suggested correction to overcome the rejection as suggested under MPEP §2163(III) (A).

**Finality**

The Examiner made the Office Action dated 2/27/03 final. Applicant believes the finality of the Office Action is improper.

In the first Office Action, the Examiner cited an Omega reference and acknowledged that the reference had no date. In the Notice of References Cited, line U, the citation is stated as, "OMEGA, Brochure for "OMEGAMARKER® Temperature Test Kit", No date." The Examiner states on pages 5-6 of the present Office Action that the "Applicant's arguments do not comply with 37 C.F.R. §1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made." Applicant offered no such arguments nor was the Applicant required to do so.

Such a line of reasoning assumes that Applicant accepts OMEGAMARKER® as prior art when such was not the case. The Examiner originally rejected claims 1, 3, 4, 7, 9, and 16-21 through application of a reference without a date. In providing a reference without a date the Examiner did not satisfy the burden of showing that the reference is actually prior art predating the present application. In the response to the first Office Action, Applicant provided no remarks regarding the substance of the rejections based on the OMEGAMARKER® reference because the

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application of the reference to the claims of the present invention was unsustainable without some indication that the reference is actually prior art. The Examiner provided nothing to indicate as much. Therefore, the first Office Action was incomplete. Applicant need not define its invention over references that are not prior art.

MPEP §2271 states that, "Before a final action is in order, a clear issue should be developed between the examiner and the patent owner. To bring the prosecution to a speedy conclusion and at the same time deal justly with the patent owner and the public, **the examiner will twice provide** the patent owner with such information and references as may be useful in defining the position of the Office as to unpatentability before the action is made final." The Examiner has not afforded the Applicant such an opportunity because the first Office Action was incomplete. Because this is the Applicant's first opportunity to respond to a dated OMEGAMARKER® reference, the finality of the present office action is premature and as such should be withdrawn.

### **§103 Rejection**

In the current Office Action mailed 2/27/2003, the Examiner rejected claims 1, 3, 4, 7, 9, and 16-20 under §103(a) over OMEGAMARKER® Temperature Test Kit in view of Deats. At this time, Applicant submits for consideration, the following amendments and response regarding the patentability of the above claims over the OMEGAMARKER® reference, as the Examiner has, for the first time, indicated a date to validate the applicability of the reference to the present invention.

Claim 1 has been amended to call for "a connector physically connecting the first and second indicator sticks in a single assembly such that the first and second indicator sticks are independently connected thereto." The Examiner states that "Wang shows a dual crayon holder assembly comprising: a first crayon (30), a second crayon (30) and a connector (10) physically connecting the first and second crayons in a single assembly." The crayons of Wang are not connected to the barrel as suggested by the Examiner but are connected to a connecting device. Wang discloses that "the connecting device (20) is slidably mounted in the barrel (10). One or two writing implements (30) may be attached to the connecting device (20)." Col. 2, lns. 5-7. Additionally, "the writing implement (30) is inserted into the cavity (231) and held in place when pressed between the multiple longitudinal ribs (232) so that the writing implement (30) slides in the barrel (10) due to the connecting device (20)." Col. 2, lns. 23-27. As show in Fig. 1, and

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outlined above, the connecting device 20 of Wang has two writing implements 30 attached thereto. As the connecting device 20 is moved in one direction, the writing device 30 attached to the opposite end of the connecting device 20 moves inside the hollow barrel 10. As such, the first and second writing devices are not independently connected to the assembly. That is, the position of the first writing device directly effects the position of the second writing device with respect to the assembly.

As such, the connector of Wang does not physically connect the first and second indicator sticks in a single assembly such that the first and second indicator sticks are independently connected thereto. Applicant believes claim 1, and those claims that depend therefrom, are patentably distinct over the art of record and therefore requests a notice of allowance of those claims.

The Examiner next rejected claims 16-21 under 35 U.S.C. §103(a) over Wang in view of OMEGAMARKER®. Claim 16, as amended, calls for "a dual temperature indicator stick apparatus comprising first means for indicating a first temperature, second means for indicating a second temperature; and means for retaining the first means to the second means to form a single indicator stick capable of indicating at least two temperatures and extending the first means without affecting the position of the second means relative to the means for retaining."

As stated above regarding Wang, the connector of Wang is connected to both of the writing devices but the first and second means are incapable of independent positioning with respect to the retaining means. As such, the first means cannot be extended without affecting the position of the second means. Applicant believes claim 16 is patentably distinct over the art of record. As such, Applicant requests a notice of allowance of claim 16 and those claims that depend therefrom.

### **New Claims**

New claims 28-31 are submitted herein to incorporate allowable subject matter. Claim 28 is the combination of the allowable subject matter of claims 1 and 2. Claim 29 is the combination of claims 1 and 5. Claim 30 is the combination of claims 1 and 6. Claim 31 is the combination of the subject matter of claims 1, 7, and 8. Applicant believes all of the claims of the present application, new and amended as provided herein, are in condition for allowance over the art of record for those reasons stated above. As such, Applicant respectfully requests a Notice of Allowance of claims 1-31.

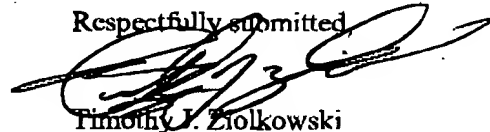
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A credit card authorization in the amount of \$408.00 is also enclosed for any fees associated with entering the claims newly presented herein.

Applicant appreciates the Examiner's consideration of these amendments and remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



Timothy J. Ziolkowski  
Registration No. 38,368  
Direct Dial 262-376-5139  
[tjz@zpspatents.com](mailto:tjz@zpspatents.com)

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**P.O. ADDRESS:**

Ziolkowski Patent Solutions Group, LLC  
14135 North Cedarburg Road  
Mequon, WI 53097-1416  
262-376-5170

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